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HOUSE BILL 51

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO LABOR; REVISING CHILD LABOR PROVISIONS TO INCLUDE THE FILM INDUSTRY; MODIFYING AGE REQUIREMENTS; PROVIDING FOR APPEAL PROCEDURES; CHANGING PENALTIES; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 50, Article 6 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Chapter 50, Article 6 NMSA 1978 may be cited as the "Child Labor Act"."

Section 2. A new section of the Child Labor Act is enacted to read:

"[NEW MATERIAL] EXCEPTIONS.--

A. A child under the age of sixteen may be employed without obtaining a work permit and without the restrictions on

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1 the age of the child or time of employment imposed by Sections
2 50-6-1 through 50-6-3 NMSA 1978 if the child is employed:

3 (1) by a parent in an occupation other than
4 manufacturing or mining or other than an occupation found to be
5 particularly hazardous or detrimental to the health of children
6 under the age of sixteen;

7 (2) as an actor or performer in motion
8 picture, theatrical, radio or television productions; or

9 (3) to sell or deliver newspapers, with the
10 parent's consent, during the school term or during vacation and
11 the child is attending school as required by law and does not
12 engage in such employment except at times when the child's
13 presence is not required at school.

14 B. The employer of a child employed pursuant to
15 Subsection A of this section is not required to obtain and
16 preserve a work permit in accordance with Section 50-6-9 NMSA
17 1978 for that child."

18 Section 3. A new section of Chapter 50, Article 6 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] CHILDREN WORKING IN THE PERFORMING ARTS.--

21 A. For the purposes of this section, a "performer"
22 means a person employed to act or otherwise participate in the
23 performing arts, including motion picture, theatrical, radio or
24 television products.

25 B. A performer under eighteen years of age is

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1 considered a child subject to the Child Labor Act unless:

2 (1) the performer has satisfied the compulsory
3 education laws of the state;

4 (2) the performer is married;

5 (3) the performer is a member of the armed
6 forces; or

7 (4) the performer is legally emancipated.

8 C. A child may not begin work earlier than 5:00
9 a.m. and the workday must end no later than 10:00 p.m. on
10 evenings preceding school days and 12:00 a.m. on mornings of
11 nonschool days.

12 D. A child-performer's working hours, including
13 school time, are limited as follows:

14 (1) a child under the age of six shall not be
15 employed or permitted to labor for more than six hours in one
16 day;

17 (2) a child over the age of six and under the
18 age of nine shall not be employed or permitted to labor for
19 more than eight hours in one day;

20 (3) a child over the age of nine and under the
21 age of sixteen shall not be employed or permitted to labor for
22 more than nine hours in one day; and

23 (4) a child over the age of sixteen and under
24 the age of eighteen shall not be employed or permitted to labor
25 for more than ten hours in one day.

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1 E. If a child engages in employment on school days,
2 a teacher with credentials appropriate to the level of
3 education needed shall be provided by the employer."

4 Section 4. A new section of the Child Labor Act is
5 enacted to read:

6 "[NEW MATERIAL] CIVIL PENALTY--ISSUANCE OF CITATION.--

7 A. If the director of the labor and industrial
8 division of the labor department finds that an employer has
9 violated a provision of the Child Labor Act, the director shall
10 issue a citation and impose a civil penalty on the employer of
11 not less than one hundred dollars (\$100) and not more than five
12 thousand dollars (\$5,000) for each violation of that act. Each
13 violation of a provision of the Child Labor Act constitutes a
14 separate offense.

15 B. If the director of the labor and industrial
16 division of the labor department finds that an employer has
17 violated a provision of the Child Labor Act, in addition to
18 issuing the citation and imposing the appropriate fine upon the
19 employer, the director shall refer the case to the district
20 attorney in the county in which the violation occurred for
21 criminal prosecution."

22 Section 5. A new section of the Child Labor Act is
23 enacted to read:

24 "[NEW MATERIAL] APPEAL OF ADMINISTRATIVE DECISIONS.--

25 A. The aggrieved party may appeal the issuance of a

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1 citation by the director of the labor and industrial division
2 of the labor department made pursuant to the Child Labor Act to
3 the labor and industrial commission sitting as the appeals
4 board by filing notice of the appeal with the director within
5 fifteen days after notice of a citation.

6 B. The labor and industrial commission, sitting as
7 the appeals board, shall adopt rules as it deems necessary for
8 the prompt disposition of appeals. A copy of the rules shall
9 be filed with the librarian of the supreme court law library.

10 C. The appeals board, within ten days after the
11 filing of the appeal, shall set the matter for an oral hearing
12 within thirty days and, following the hearing, shall enter a
13 decision within ten days after the close of the hearing and
14 promptly mail copies of the decision to the parties.

15 D. Decisions of the appeals board may be appealed
16 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

17 Section 6. Section 50-6-1 NMSA 1978 (being Laws 1925,
18 Chapter 79, Section 1, as amended) is amended to read:

19 "50-6-1. CHILDREN UNDER FOURTEEN--EMPLOYMENT [~~DURING~~
20 ~~SCHOOL HOURS]~~ PROHIBITED.--No child under fourteen years of age
21 shall be employed or permitted to labor at any gainful
22 occupation [~~during the hours during which the schools in the~~
23 ~~district in which the child resides are in session. No child~~
24 ~~under the age of fourteen years shall be employed at any~~
25 ~~gainful occupation when the school of the district in which~~

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1 ~~such child resides is not in session unless such child obtains~~
2 ~~a permit certificate issued in the manner and by the authority~~
3 ~~herein directed] unless otherwise provided for in the Child~~
4 ~~Labor Act."~~

5 Section 7. Section 50-6-2 NMSA 1978 (being Laws 1925,
6 Chapter 79, Section 2, as amended) is amended to read:

7 "50-6-2. [~~CERTIFICATE~~] WORK PERMIT FOR CHILDREN FOURTEEN
8 TO SIXTEEN [~~DURING SCHOOL TERM~~].--[~~No~~] A child over the age of
9 fourteen years and under the age of sixteen years shall not be
10 employed or permitted to labor at any gainful occupation
11 [~~during the term of the school of the district in which the~~
12 ~~child resides unless the child has procured and filed] without
13 procuring and filing a work permit [~~certificate as herein~~]
14 unless otherwise provided for in the Child Labor Act."~~

15 Section 8. Section 50-6-3 NMSA 1978 (being Laws 1925,
16 Chapter 79, Section 3, as amended) is amended to read:

17 "50-6-3. MAXIMUM HOURS FOR CHILDREN [~~UNDER~~] FOURTEEN TO
18 SIXTEEN.--[~~No child~~]

19 A. Children over the age of fourteen and under the
20 age of [~~fourteen~~] sixteen years shall not be employed or
21 permitted to labor at any gainful occupation for more than
22 [~~forty-four~~] forty hours in any one week nor more than eight
23 hours in any one day [~~except under special circumstances to be~~
24 ~~determined by the officer who issued the permit; but in no case~~
25 ~~shall such child be permitted to work more than forty-eight~~

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1 ~~hours in any one week nor shall such child begin work before~~
2 ~~7:00 a.m. nor continue after 9:00 p.m. of any one day] when~~
3 school is not in session unless otherwise provided for in the
4 Child Labor Act.

5 B. Children over the age of fourteen or under the
6 age of sixteen shall not be employed unless otherwise provided
7 for in the Child Labor Act:

8 (1) before 7:00 a.m. or after 7:00 p.m. during
9 the calendar school year;

10 (2) before 7:00 a.m. or after 9:00 p.m.
11 outside of the calendar school year;

12 (3) during school hours, except as provided
13 for in work experience and career exploration programs;

14 (4) more than three hours per day during
15 school days; or

16 (5) more than eighteen hours per week during
17 school weeks."

18 Section 9. Section 50-6-4 NMSA 1978 (being Laws 1925,
19 Chapter 79, Section 5, as amended) is amended to read:

20 "50-6-4. PROHIBITED OCCUPATIONS FOR CHILDREN UNDER
21 SIXTEEN--EXCEPTIONS.--~~[No child]~~

22 A. A child under the age of sixteen years shall not
23 be employed or permitted to labor at any of the following
24 occupations or in any of the following positions:

25 (1) on or around belted machines while in

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1 motion;

2 (2) on or around power-driven woodworking
3 machines used for cutting, shaping, forming, surfacing,
4 nailing, stapling, wire stitching, fastening or otherwise
5 assembling, processing or printing wood or veneer;

6 (3) on or around power-driven hoisting
7 apparatus with the exception that this section shall not
8 prohibit the operation of an automatic elevator [~~which~~] that is
9 controlled by pushbuttons making leveling, holding, opening and
10 closing of the car and hoistway doors entirely automatic;
11 [~~prohibited~~]

12 (4) in or about plants, establishments or jobs
13 using, manufacturing or storing explosives or articles
14 containing explosive components;

15 (5) electronics jobs where the child is
16 exposed to electrical hazards;

17 (6) in or about any establishment where malt
18 or alcoholic beverages are manufactured, packed, wrapped or
19 bottled;

20 (7) municipal firefighting whether using
21 volunteers or paid employees;

22 (8) manufacture of goods for immoral purposes;
23 [~~nor~~]

24 (9) in any employment dangerous to lives and
25 limbs or injurious to the health or morals of children under

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1 the age of sixteen years; [~~Provided further, that~~] or
2 (10) soliciting door-to-door for other than a
3 nonprofit organization.

4 B. The provisions of this [~~act shall~~] section do
5 not apply to:

6 (1) children engaged in working with equipment
7 in any school or place where [~~manual training~~] cooperative
8 education or science is taught while under supervision of an
9 instructor; [~~This provision shall not apply to apprenticeships~~]
10 or

11 (2) apprentices while under the supervision of
12 a journeyman [~~or instructor~~] in a certified apprenticeship
13 program.

14 C. Additional hazardous occupations not
15 specifically listed in this section [~~will~~] shall be determined
16 by the state child labor inspector following consultation with
17 the employer who wishes to employ minors over the age of
18 fourteen years and under sixteen years of age."

19 Section 10. Section 50-6-7 NMSA 1978 (being Laws 1925,
20 Chapter 79, Section 8, as amended) is amended to read:

21 "50-6-7. [~~LABOR~~] WORK PERMIT [~~CERTIFICATES~~]--ISSUANCE--
22 AUTHORIZED OFFICIALS--APPLICATION--CONTENTS--PROOF--COPIES--
23 MAXIMUM TERM.--

24 A. [~~Permit certificates~~] Work permits shall be
25 issued only by the school superintendents, school principals,

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1 designated issuing school officers or the director of the labor
2 and industrial division of the labor department or the
3 director's designee.

4 B. ~~[No]~~ A work permit ~~[certificate]~~ shall not be
5 issued to ~~[any]~~ a child until satisfactory proof has been
6 furnished that the work in which the child is to engage is not
7 dangerous to the child ~~[nor]~~ or injurious to ~~[his]~~ the child's
8 health or morals.

9 C. The application for the ~~[certificate must]~~ work
10 permit shall show that the ~~[child is in good physical health~~
11 ~~and that the]~~ work to be performed would not result in injury
12 to the health, morals or mental development of the child.
13 Satisfactory proof of the age of the child at the date of the
14 application shall be furnished. ~~[In the case of children over~~
15 ~~the age of fourteen years and under the age of sixteen years]~~
16 Any application for the employment of children at any gainful
17 occupation during the session hours of the school of the
18 district in which the child resides shall set forth, in
19 addition to the foregoing, the necessity to the family or the
20 dependents of the child or for ~~[his]~~ the child's own support of
21 the income to be derived from the employment or labor.

22 D. Whenever the person authorized to issue the
23 ~~[labor]~~ work permit is satisfied that the provisions of this
24 section have been complied with, ~~[he]~~ the person shall issue to
25 the child a ~~[labor]~~ work permit, keeping one copy on file and

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1 sending one copy of [~~this~~] the permit to the labor and
2 industrial [~~commission~~] division of the labor department.

3 E. No work permit [~~certificate~~] shall be in force
4 without renewal for a longer period than one year from the date
5 of issuance."

6 Section 11. Section 50-6-8 NMSA 1978 (being Laws 1925,
7 Chapter 79, Section 9, as amended) is amended to read:

8 "50-6-8. RENEWAL OF [~~LABOR~~] WORK PERMITS.--The officer
9 authorized to issue work permits may renew [~~any labor~~] a work
10 permit at the expiration date thereof for a period not
11 exceeding one year upon a satisfactory showing upon the part of
12 the child, [~~its~~] the child's parent, [~~or~~] guardian or [~~person~~
13 ~~in loco parentis~~] custodian that the provisions of [~~Sections~~
14 ~~59-6-1 through 59-6-16 NMSA 1953~~] the Child Labor Act are being
15 complied with and that [~~such~~] the child is in good health.

16 [~~Such~~] The extension of time shall be made by [~~such~~] the
17 officer writing upon the certificate the following words:
18 "this [~~certificate~~] work permit is extended for a period of
19 days from this date" and by the officer signing [~~his or~~
20 ~~her name thereto~~] the certificate."

21 Section 12. Section 50-6-9 NMSA 1978 (being Laws 1925,
22 Chapter 79, Section 10, as amended) is amended to read:

23 "50-6-9. EMPLOYER'S RECORDS--FORM OF PERMITS.--Whenever
24 any child is employed or permitted to labor at any gainful
25 occupation permitted by the laws of this state, the employer of

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1 ~~[such]~~ the child shall preserve on file the ~~[labor]~~ work permit
2 of ~~[such]~~ the child and shall keep posted in a conspicuous
3 place about the premises where ~~[such]~~ the child is employed a
4 list of all children there at work by virtue of ~~[labor]~~ work
5 permits. The form for all ~~[labor]~~ work permits shall be
6 prepared by and shall contain such information concerning the
7 identity of the child as may be prescribed by the labor and
8 industrial ~~[commission]~~ division of the labor department."

9 Section 13. Section 50-6-10 NMSA 1978 (being Laws 1925,
10 Chapter 79, Section 11, as amended) is amended to read:

11 "50-6-10. INSPECTION OF ~~[CERTIFICATES]~~ WORK PERMITS,
12 RECORDS AND PREMISES BY THE LABOR AND INDUSTRIAL ~~[COMMISSION]~~
13 DIVISION OF THE LABOR DEPARTMENT.--All ~~[employment~~
14 ~~certificates]~~ work permits and records and the premises where
15 children are employed are subject to inspection by
16 representatives of the labor and industrial ~~[commission]~~
17 division of the labor department. The ~~[commission]~~ director of
18 the division may, for cause, cancel ~~[any labor]~~ a work permit
19 with the concurrence of the officer issuing the permit but, in
20 case they disagree, the district court may cancel the permit on
21 complaint setting forth the grounds therefor under the
22 provisions of ~~[Sections 59-6-1 through 59-6-15 NMSA 1953]~~ the
23 Child Labor Act."

24 Section 14. Section 50-6-12 NMSA 1978 (being Laws 1925,
25 Chapter 79, Section 13, as amended) is amended to read:

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1 "50-6-12. PENALTIES [~~FOR VIOLATION OF ACT~~].--~~[Whoever]~~

2 A. A person who employs a child, or ~~[whoever having~~
3 ~~under his control]~~ who is the parent, guardian or custodian of
4 a child, and who permits [such] that child to be employed in
5 violation of any of the provisions of [~~Sections 59-6-1 through~~
6 ~~59-6-16 NMSA 1953 shall be]~~ the Child Labor Act is guilty of a
7 petty misdemeanor [~~and shall be fined not less than twenty-five~~
8 ~~dollars (\$25.00) nor more than three hundred dollars (\$300)~~
9 ~~and, on default of the payment of such fine, may be sentenced~~
10 ~~to the county jail for not less than five days nor more than~~
11 ~~fifteen days]~~. Each violation of [~~Sections 59-6-1 through~~
12 ~~59-6-16 NMSA 1953 shall constitute]~~ the Child Labor Act
13 constitutes a separate offense. [~~In the event of]~~ A second
14 conviction of an employer, parent, guardian or custodian for
15 violation of [~~Sections 59-6-1 through 59-6-16 NMSA 1953, the~~
16 ~~court trying the cause shall sentence such employer to the~~
17 ~~county jail for a period of not less than thirty days; and for~~
18 ~~any succeeding conviction for the like offense, the court~~
19 ~~trying the cause shall sentence the employer to imprisonment in~~
20 ~~the state penitentiary for a period of not less than one year~~
21 ~~nor more than two years]~~ the Child Labor Act is a misdemeanor.
22 A third or subsequent conviction of an employer, parent,
23 guardian or custodian for violation of the Child Labor Act is a
24 fourth degree felony.

25 B. The director of the labor and industrial

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1 division of the labor department shall report a violation of
2 the Child Labor Act to the local district attorney, who shall
3 prosecute the alleged violator. Upon conviction, the employer,
4 parent, guardian or custodian may be sentenced to county jail
5 for a period of not less than thirty days and for any
6 succeeding conviction for the like offense, the employer,
7 parent, guardian or custodian is guilty of a fourth degree
8 felony."

9 Section 15. Section 50-6-13 NMSA 1978 (being Laws 1925,
10 Chapter 79, Section 14) is amended to read:

11 "50-6-13. DISTRICT COURT JURISDICTION.--The district
12 courts are hereby given original jurisdiction in all cases of
13 violations of the provisions of [~~this act~~] the Child Labor
14 Act."

15 Section 16. Section 50-6-14 NMSA 1978 (being Laws 1925,
16 Chapter 79, Section 15, as amended) is amended to read:

17 "50-6-14. STATE CHILD LABOR INSPECTOR--APPOINTMENT--
18 DIRECTION--QUALIFICATIONS.--There shall be a "state child labor
19 inspector", appointed by and subject to the [~~labor~~
20 ~~commissioner. The inspector must be qualified by special~~
21 ~~training and experience for this work and must pass a~~
22 ~~satisfactory examination given by the labor commissioner for~~
23 ~~this purpose~~] director of the labor and industrial division of
24 the labor department."

25 Section 17. REPEAL.--Sections 50-6-6, 50-6-15 and 50-6-16

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1 NMSA 1978 (being Laws 1925, Chapter 79, Section 7, Laws 1963,
2 Chapter 175, Section 4 and Laws 1959, Chapter 298, Section 1,
3 as amended) are repealed.

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